

From: Richard L. Bolton [<mailto:rbolton@boardmanclark.com>]

Sent: Friday, April 14, 2017 11:50 AM

To: Mackin, Anna <Anna.Mackin@oag.texas.gov>

Cc: Dan Byrne (DByrne@fbhg.law) <DByrne@fbhg.law>

Subject:

Anna: We would propose doing depositions of Sam Grover and Annie Laurie Gaylor here at my office. We can be available pretty much at your convenience over the next 3 weeks.

Also, with respect to depositions of Governor Abbott and John Sneed, we do want to proceed with those. As an aside, and in regard to your disclosure last night of an unidentified the scrivener of Governor Abbott's letter to the State Preservation Board, you have not indicated that the letter was prepared by a rogue employee or was otherwise unauthorized. We continue to believe that the Governor was directly involved. Rich



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From: [Richard L. Bolton](#)
To: [Mackin, Anna](#)
Cc: [Dan Byrne \(DByrne@fbhg.law\)](#); [Reed, Cherie](#); [Clopton, Jodie](#)
Subject: Re: FFRF v. Abbott, et al.
Date: Thursday, April 13, 2017 7:46:51 PM

We will get back to you. There is a credibility issue lurking here, meaning I don't really believe the story you are passing on to us. If u

Sent from my iPhone

On Apr 13, 2017, at 5:46 PM, Mackin, Anna <Anna.Mackin@oag.texas.gov> wrote:

Rich,

We want to work with you to make sure you get all the discovery you need. But we don't think a deposition of the Governor is either appropriate or necessary. As a high-ranking government official, the Governor is protected from depositions absent a showing of extraordinary circumstances. And we are aware of nothing in this case that would satisfy that very high bar. To the contrary, the Governor has no unique personal knowledge of this dispute. It was the Governor's staff—not the Governor—who identified the need to remove the display, who wrote the letter to the preservation board, and who auto-penned the Governor's signature on that letter. We are committed to providing you the relevant and non-privileged facts surrounding the dispute through written discovery, and the Governor's Office is even amenable to a written deposition under Rule 31(a)(4). Please let us know if you agree to this alternative.

If we cannot agree, please confirm that you would oppose our motion for a protective order regarding the Governor's deposition.

Thank you,
Anna

From: Richard L. Bolton [<mailto:rbolton@boardmanclark.com>]
Sent: Thursday, April 06, 2017 2:34 PM
To: Mackin, Anna <Anna.Mackin@oag.texas.gov>
Cc: Dan Byrne (DByrne@fbhg.law) <DByrne@fbhg.law>; Reed, Cherie <Cherie.Reed@oag.texas.gov>; Clopton, Jodie <Jodie.Clopton@oag.texas.gov>
Subject: RE: FFRF v. Abbott, et al.

Anna: Let's start Mr. Davis' deposition at 10:00, if that is convenient. Also, we should schedule a meet and confer to discuss your objection to producing other witnesses, before we file our motion to compel. In anticipation, I can tell you that we believe these folks had some first-hand involvement in the actions in question. If you can convince

me otherwise, then I will also become a climate-change denier. Thanks. Rich



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From: Mackin, Anna [<mailto:Anna.Mackin@oag.texas.gov>]

Sent: Thursday, April 06, 2017 1:51 PM

To: Richard L. Bolton

Cc: Dan Byrne (DByrne@fbhg.law); Reed, Cherie; Clopton, Jodie

Subject: RE: FFRF v. Abbott, et al.

Rich,

John Sneed is no longer with the Preservation Board. And, in any event, both Director Sneed and Governor Abbott qualify as high ranking state officials for purposes of the time period in question. “[A] high-ranking government official should not—absent exceptional circumstances—be deposed or called to testify regarding the reasons for taking official action, ‘including the manner and extent of his study of the record and his consultation with subordinates.’” *Lederman v. New York City Dept. of Parks and Recreation*, 731 F.3d 199, 203 (2nd Cir. 2013) (citing *United States v. Morgan*, 313 U.S. 409, 422 (1941); *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007); *In re United States (Holder)*, 197 F.3d 310, 313–14 (8th Cir. 1999); *In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995); *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir. 1993); *Franklin Sav. Ass’n v. Ryan*, 922 F.2d 209, 211 (4th Cir. 1991); *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985); *Kyle Eng’g Co. v. Kleppe*, 600 F.2d 226, 231–32 (9th Cir. 1979); *Warren Bank v. Camp*, 396 F.2d 52, 56–57 (6th Cir. 1968)).

Based on this, my clients and I do not believe it is proper for the Governor and the former Executive Director to be forced to sit for a deposition under these circumstances.

Nonetheless, we are available to proceed with Robert Davis’s deposition on April 24. We’d like to do the deposition at the State Preservation Board, 201 E. 14th St. Suite 950, Austin, Texas 78701, Room 990. Please let me know if that still works, and what time you’d like to start.

I would like to depose Sam Grover and Annie Laurie Gaylor. Will you please advise me of their availability?

Thanks,
Anna

From: Richard L. Bolton [<mailto:rbolton@boardmanclark.com>]
Sent: Thursday, April 06, 2017 10:01 AM
To: Mackin, Anna <Anna.Mackin@oag.texas.gov>
Cc: Dan Byrne (DByrne@fbhg.law) <DByrne@fbhg.law>; Reed, Cherie <Cherie.Reed@oag.texas.gov>; Clopton, Jodie <Jodie.Clopton@oag.texas.gov>
Subject: RE: FFRF v. Abbott, et al.

Morning Anna: Any word on dates for others? Also, any time on the 24th that is best for Mr. Davis? Thanks. Rich



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From: Mackin, Anna [<mailto:Anna.Mackin@oag.texas.gov>]
Sent: Monday, April 03, 2017 11:16 AM
To: Richard L. Bolton
Cc: Dan Byrne (DByrne@fbhg.law); Reed, Cherie; Clopton, Jodie
Subject: Re: FFRF v. Abbott, et al.

Rich,

Apologies for the delay, I have been on vacation and am out of the office until Wednesday morning. I have reached out to my clients, and Robert Davis is available for a deposition on April 24. Please let me know if that will work for you and I'll update you when I hear back on other dates when I hear back from my clients.

Thanks,

Anna

From: Richard L. Bolton <rbolton@boardmanclark.com>
Sent: Monday, March 27, 2017 4:54:37 PM
To: Mackin, Anna
Cc: Dan Byrne (DByrne@fbhg.law)
Subject: FFRF v. Abbott, et al.

Good Afternoon Anna: I attach FFRF Settlement and Witness disclosure letters. Also, I would like to take the deposition of Governor Abbott, John Sneed, and Robert Davis as

soon as practical. Please provide some dates in the near future that work for you and your witnesses. Thanks. Rich



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